

O'Tormey, Sean P (FAA)

From: O'Tormey, Sean P (FAA)
Sent: Thursday, April 28, 2022 11:24 AM
To: kellyneubecker@gmail.com
Cc: Ngo, Dan A (FAA)
Subject: FAA Petition for Exemption: Federal Docket No. FAA-2022-0119

Ms. Kelly J. Neubecker
CEO
UASolutions Group, LLC
19940 Simla Hwy
Simla, CO 80835

RE: DTM Custom Applications (Regulatory Docket No. FAA-2022-0119)

Dear Ms. Neubecker:

This letter responds to your March 29, 2022 response objecting to inclusion of any portion of your petition and supporting documentation, except for the summary, in docket number FAA-2022-0119 on regulations.gov.

As explained in our previous communication, the FAA treats the disclosure of information via the exemption process under 14 CFR Part 11 similar to release of information under the Freedom of Information Act (FOIA). Therefore, if information cannot be withheld under FOIA, the FAA may choose to disclose that information in the body of the exemption or in the docket. To be withheld under FOIA, the information must be covered by a statutory exemption set forth in 5 U.S.C. § 552(b), of which exemption (b)(4) may be applicable. This exemption covers “trade secrets and commercial or financial information obtained from a person that is privileged or confidential.” The information you provided in your petition and supporting documentation will be summarized and disclosed within the body of the exemption unless it is exempt from mandatory release under the FOIA.

While your response to our previous communication broadly objected to disclosure of your petition and supporting documentation, the FAA has determined that the petition in its entirety is not protected by any FOIA exemption. You have claimed that the petition consists of work product and potential trade secret analysis; however, nearly identical petitions are already available to the public on regulations.gov.

To the extent that there is specific information within the petition that you believe warrants redaction or withholding, please identify the specific information you believe is entitled to withholding under FOIA exemption 4 and provide us a written explanation as to why you believe FOIA exemption 4 would apply to that material. You should address the following, which are the elements of FOIA exemption 4 the agency would be required to prove in response to a FOIA request:

- 1) Explain how the specific information you have identified is either commercial or financial. Information is considered commercial or financial if the owner of the information has a “commercial interest” in the information. *See Pub. Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983);
- 2) Explain how the information you have identified is confidential. In the context of FOIA exemption 4, information is confidential when it is both customarily and in practice kept confidential. In addition, information is not confidential if the government has provided assurances that, upon its submission, it

will not be kept confidential. *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356 (2019). Therefore, please provide an explanation as to whether you customarily and in practice treat the identified information as private.

Factors you may wish to discuss include: the general custom or usage in your business or your client's business regarding this type of information, and the number and positions of persons who have, or have had access to the information. Please note that information that is already publicly available, or identical to publicly available information, is not considered confidential for purposes of FOIA Exemption 4.

- 3) Describe any reasonably foreseeable harm that might result from the information's release, and the type and degree of commercial injury, if any, that disclosure would cause.

Finally, FOIA requires release of reasonably segregable portions of records after redaction of exempt segments. Your response to this letter should avoid broad claims of exemption that would cover non-exempt information.

The FAA will carefully consider the justification you provide us and will endeavor to safeguard any protectable FOIA Exemption 4 trade secret, commercial, or financial information to the extent permitted under law. Should we disagree with your position regarding some or all of the information requested, and determine it to be releasable, we will provide you with advance notice of our decision to make the information available for public inspection on regulations.gov.

Please respond to this notice in writing with any objections by **May 5, 2022**. If your response is received by the specified date, your objections will be given due consideration before we make a decision. If we have not heard from you by the above date, we will assume that you have no objection to disclosure of the information requested.

Sincerely,

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